Filed 2/1/10 Theresa T. v. Superior Court CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THERESA T., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B220382 (Super. Ct. No. CK19038)

ORIGINAL PROCEEDING; petition for extraordinary writ. Debra L. Losnick, Commissioner. Petition denied.

Los Angeles Dependency Lawyers, Law Office of Emma Castro, Ellen L. Bacon, and Unhui Yoo for Petitioner.

No appearance for Respondent.

Richard E. Kalunian, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Real Party in Interest.

Theresa T. (Mother), biological mother[1] of minors Q.J. (born May 1994) and D.P. (born October 2006), requests that the order terminating family reunification services be reversed, that the order setting the hearing pursuant to Welfare and Institutions Code[2] section 366.26 be reversed, and that the case be remanded with instructions to allow for additional family maintenance services and the placement of the minors in Mother's care. Mother contends: "Substantial evidence did not support the trial court's decision the children were at substantial risk if returned to Mother." We disagree with Mother's contention and deny the petition.

FACTS

On January 31, 2008, the Department of Children and Family Services (DCFS) filed a detention report, in which it alleged that Mother had struck and neglected infant D.P.; that Mother has a history of illicit drug abuse; that Mother was convicted of possession of cocaine base for sale; and that older child Q.J. was at risk. The minors were placed with maternal aunt, R.T.

On that same day, reunification services were ordered.

On March 12, 2008, a first amended petition was filed alleging that the minors were subjected to serious physical harm: in 2007, Mother struck Q.J. with a belt, causing her to suffer a black eye; on January 31, 2008, Mother struck infant D.P. with her hands, causing him unreasonable pain and suffering; and Mother failed to protect the minors due to her having struck them, her own abuse of illicit drugs, and her criminal conviction.

---

[1] K.J. (who is the alleged father of Q.J. and who has been incarcerated in California state prison since 1998), and Dwight P. (who is the presumed father of D.P. and who is incarcerated at the Federal Bureau of Prisons in Victorville) are not parties to these proceedings.

[2] All section references are to the Welfare and Institutions Code.

On May 27, 2008, the juvenile court adjudicated the amended petition, declared both minors wards pursuant to section 300,[3] and ordered reunification services for Mother, including monitored visitation and individual counseling to address parenting and drug abuse issues. The court further ordered Mother to submit to random, witnessed, on-demand, weekly consecutive drug testing.

The September 10, 2008 Status Review Report shows that Mother had submitted to weekly drug tests, with "dirty" test results on March 12, 2008, and May 14, 2008, and missed the test scheduled for August 1, 2008. Mother had participated in a "full program" at the Department of Mental Health and had completed parenting classes.

The December 11, 2008 Status Review Report reports that Mother completed drug abuse classes, was visiting the minors regularly, and was participating in counseling on a weekly basis.

The March 11, 2009 Status Review Report, however, reports that Mother had missed six drug tests (September 12, September 25, October 8, November 21, December 1, and December 12) and had not provided adequate documentation to support her excuse that she had missed the drug tests because of hospitalization. Mother had explained that she missed the drug tests because she suffers from pancreatitis and has been hospitalized on many occasions as a result.

---

[3] Section 300 provides, in pertinent part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. . . . (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or . . . by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

By July 20, 2009, Mother had moved to Mojave. Her therapist reported that Mother had missed many sessions and had not shown any progress in therapy. The minors were living with maternal grandmother, S.T.

Mother and Q.J. participated in conjoint therapy. When Q.J. complained during a session that she had been sexually assaulted at school, Mother "failed to be supportive and sympathetic during the conjoint session."

The therapist further reported that Mother consistently failed to reschedule missed appointments, and the therapist advised against family reunification.

On August 17, 2009, Q.J. was detained and placed in a group home as a result of her trying to run away from maternal grandmother's home after a verbal altercation with grandmother and maternal aunt.

On September 3, 2009, Mother tested positive for alcohol; the test results showed a blood alcohol level of .15.

At the contested hearing conducted on October 29, and October 30, 2009, the social worker testified that Mother's therapist had advised against family reunification.

Mother testified that, over the past three months, she had suffered four pancreatic attacks and had been hospitalized for each episode. On each occasion, Mother remained in the hospital one day, until stabilized. Mother testified that, if the minors were with her in Mojave and she had to be hospitalized, she would telephone Lewis Christopher, who lives in Los Angeles, and he agreed to stay with the children while she was hospitalized.

Mother testified that the September 3 test result of a blood alcohol level of .15 was caused by her having consumed a glass of wine with dinner the previous night.

The juvenile court terminated family reunification services, explaining:

"The court has carefully reviewed all of the documents presented for this hearing, specifically the initial report of July 20, 2009, through and including the report for yesterday when we started this trial, October 29 of 2009.

"What troubles me the most are the positive tests. I don't know why the mother would be testing and drinking alcohol the night before she may have a test. I don't think

that the other test results are consistent with the medications that the mother has been prescribed.

"I too am concerned. I am not concerned about mother's housing. There are lots of people, particularly in this current state of affairs that don't have housing. But because the mom is hospitalized often, I don't feel that we have a plan that would work.

"I realize that [Q.J.] is 15 and could probably stay home for a while with her brother, but I think overnights and a couple of days while the mother is in the hospital is asking too much of a 15 year old.

"Mother is indicating she would have her friend Lewis [Christopher] help her, but he too is in Los Angeles as are her relatives. So I don't see how that would really work either. And most importantly or equally perhaps is that the mother's therapist does not feel that she is ready for full-time care.

"So on those bases, the court is agreeing with the Department, and I am ordering that reunification services be terminated; that permanent placement services be ordered. Conditions do continue to exist which necessitated the court's initial intervention. Case plan and placements are appropriate and necessary. Reasonable services provided. Mother is in partial compliance with the case plan.

"I do not feel that we need to, if you will, take back the mother's current weekend visits. I think those are going appropriately. Obviously, the mother can file a [section] 388 [petition] when she has a little more of a plan and a track record of some series of clean tests behind her."[4]

---

[4] Subdivision (a) of section 388 provides, in pertinent part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court."

DISCUSSION

Section 366.22, subdivision (a), provides that "the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services: "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.22, subd. (a); see *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.)

We view the record to determine whether substantial evidence supports the lower court's finding that the minors would be at substantial risk of detriment if returned to Mother's custody. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) We consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court's order. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) "'Substantial evidence' means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401; *In re N.S.* (2002) 97 Cal.App.4th 167, 172.)

Substantial evidence supports the trial court's finding that the children would be at substantial risk of detriment if returned to Mother's custody. More than 20 months after the children were initially detained, Mother failed to comply with the reunification plan. She missed drug tests and did not reschedule them; she has tested positive for drugs and

alcohol; and the person upon whom she relies to care for her children upon her rehospitalization lives far from Mother's current residence.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.